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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Patent Ext., Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on the below date:

Date: June 10, 2004 Name: Nicholas M. Boivin, Reg. No. 45,650 Signature: *Nicholas M. Boivin*

BRINKS
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Keith Wood et al.

Appln. No.: 09/813,279

Filed: March 19, 2001

For: Method for Detection of ATP

Attorney Docket No: 10743-6

Examiner: Louise N. Leary

Art Unit: 1654

Mail Stop Patent Ext.
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Check for \$200.00; Application for Correction of Patent Term Adjustment under 37 C.F.R. § 1.705(b) [including Tabs A-D]
- ☒ Return Receipt Postcard

Fee calculation:

- ☐ No additional fee is required.
- ☐ Small Entity.
- ☐ An extension fee in an amount of \$_____ for a _____-month extension of time under 37 C.F.R. § 1.136(a).
- ☐ A petition or processing fee in an amount of \$_____ under 37 C.F.R. § 1.17(_____).
- ☐ An additional filing fee has been calculated as shown below:

| | | | | | Small Entity | | | Not a Small Entity | |
|---|----------------------------------|-------|---------------------------------|---------------|--------------|-----------|----|--------------------|-----------|
| | Claims Remaining After Amendment | | Highest No. Previously Paid For | Present Extra | Rate | Add'l Fee | or | Rate | Add'l Fee |
| Total | | Minus | | | x \$9= | | | x \$18= | |
| Indep. | | Minus | | | x 43= | | | x \$86= | |
| First Presentation of Multiple Dep. Claim | | | | | +\$145= | | | +\$290= | |
| | | | | | Total | \$ | | Total | \$0 |

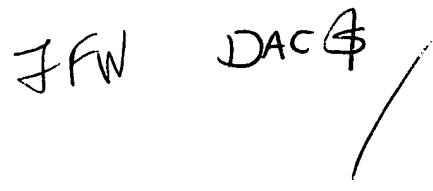
Fee payment:

- ☒ A check in the amount of \$200.00 for the Application for Correction of Patent Term Adjustment fee is enclosed.
- ☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____. A copy of this Transmittal is enclosed for this purpose.
- ☐ Payment by credit card in the amount of \$_____ (Form PTO-2038 is attached).
- ☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

Nicholas M. Boivin
Nicholas M. Boivin (Reg. No. 45,650)

June 10, 2004
Date



REMARKS

U.S. Patent Application No. 09/813,279 was allowed on May 4, 2004 with a published term adjustment under 35 U.S.C. § 154(b) of 0 days. Applicants herein apply to the U.S. Patent and Trademark Office for correction of the Patent Term Adjustment calculation pursuant to 37 C.F.R. § 1.705(b). Applicants have enclosed a check for the fee under 37 C.F.R. § 1.18(e) for filing this Application for Correction of Patent Term Adjustment. In the event that additional funds are required for the fee for Application for Correction of Patent Term Adjustment under 37 C.F.R. § 1.18(e), please charge any additional necessary fee to Deposit Account No. 23-1925. Please credit for any excess fee paid to Deposit Account No. 23-1925. A duplicate copy of this Application for Correction of Patent Term Adjustment is attached.

The patent term adjustment for U.S. Patent Application No. 09/813,279 is calculated as discussed below. Dates are specified based on the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History (attached at **Tab A**).

Note that U.S. Patent Application No. 09/813,279 is not subject to a terminal disclaimer.

37 C.F.R. § 1.703 Adjustment for Period of Examination Delay

Applicants agree with the USPTO calculation of the period of adjustment under 37 C.F.R. § 1.703(a)(1) of 380 days.

37 C.F.R. § 1.704 Reduction in Period of Adjustment

With respect to the grounds for adjustment set forth in 37 C.F.R. § 1.703(a)-(e), an applicant is deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods or time in excess of three months that are taken to reply to any notice or action by the Office. Any such three month period is measured from the date the notice or action was mailed to the applicant. The period of adjustment set forth in 37 C.F.R. § 1.703 shall be reduced by the number of

days beginning on the day ("the 3 month date") after the date that is three months after the date of mailing of the Office communication.

Applicants respectfully assert that the U.S. Patent and Trademark Office has improperly assessed a 475 day Reduction in Period of Adjustment under 37 CFR § 1.704, instead of an 8 day Reduction, related to the filing of a series of responses to three U.S. Patent and Trademark Office requests for Sequence Listings in computer readable format. Applicants have submitted fully compliant Sequence Listings on three separate occasions.

A Notice to File Missing Parts was mailed on May 23, 2001 ("Missing Parts Notice"). The Missing Parts Notice recited, among other items, a failure to provide a copy of the Sequence Listing in computer readable format and a corresponding Statement under 37 CFR § 1.821(f) ("Statement") that the Sequence Listing corresponds to the Sequence recited in the above referenced application as filed.

Applicant timely filed a Response to the Missing Parts Notice that contained, among other things, the Sequence Listing in computer readable format along with the required Statement ("First Response"). The First Response was received by the USPTO on July 26, 2001 (See Postcard at **Tab B**), less than three months after the Missing Parts Notice was mailed. The First Response included a computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was both computer readable and fully compliant with 37 CFR §§ 1.821-1.822. Therefore, no Applicant delay was incurred in responding to the Missing Parts Notice.

On October 22, 2001, a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures was mailed ("First Sequence Listing Notice"). The First Sequence Listing Notice requested the filing of a second substitute computer readable Sequence Listing and Statement.

On January 30, 2002, Applicants' fully compliant response to the First Sequence Listing Notice was received by the U.S. Patent Office (See Postcard at **Tab C**). In fact, on December 18, 2001, Applicants mailed the substitute Sequence Listing and Statement ("Second Response") containing a second computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was computer readable and

fully compliant with 37 CFR §§ 1.821-1.822. Despite having timely mailed the Second Response less than three months after the First Sequence Listing Notice was mailed, the Second Response was not received until January 30, 2002, over a month after the mailing date. Accordingly, under 37 CFR § 1.704(b), Applicants are assessed a Reduction in Period of Adjustment of 8 days, through no fault of the Applicants, in replying to the First Sequence Listing Notice.

On October 1, 2002, a second Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures was mailed ("Second Sequence Listing Notice"). The Second Sequence Listing Notice requested the filing of a third substitute computer readable Sequence Listing and Statement.

On November 13, 2002, Applicants' fully compliant response to the Second Sequence Listing Notice was received by the U.S. Patent and Trademark Office (See Postcard at **Tab D**), that contained, among other things, the Sequence Listing in computer readable format along with the required Statement ("Third Response"). The Third Response was received by the USPTO less than three months after the Missing Parts Notice was mailed. The Third Response included a computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was both computer readable and fully compliant with 37 CFR §§ 1.821-1.822. Therefore, no Reduction in Period of Adjustment was incurred in responding to the Second Sequence Listing Notice.

A Notice of Allowance was mailed on May 4, 2004. In reviewing the Notice of Allowance and the Patent Term Adjustment History on the PAIR page of the U.S. Patent and Trademark Office Website (See **Tab A**), Applicants noticed the period for Reduction in Period of Adjustment under 37 CFR § 1.704 was improperly calculated as 510 days, resulting from the sum of an alleged 475 day Reduction in Period of Adjustment ("Reduction") related to the filing of Sequence Listings as discussed above, and a 35 day Reduction related to the filing of an Information Disclosure Statement.

Applicants acknowledge that the U.S. Patent and Trademark Office has assessed a further Reduction in Period of Adjustment of 35 days under 37 CFR § 1.704(d) relating to

the filing of an Information Disclosure Statement received by the U.S. Patent and Trademark Office on September 29, 2003.

However, the PTO incorrectly assessed 475 days instead of 8 days of Reduction in Period of Adjustment related to the Sequence Listing Filings discussed above (from the mailing date of the Notice of Missing Parts on May 23, 2001 to the date the application was deemed complete on December 11, 2002).


Thus, only a 43 day total Reduction in Period of Adjustment under 37 CFR § 1.704 should have been assessed, rather than a 510 day Reduction as the U.S. Patent and Trademark Office calculated.

Total Patent Term Adjustment

For the present application, the total Patent Term Adjustment ("PTA") under 37 C.F.R. § 1.703(f) is the period of adjustment under 37 C.F.R. § 1.703 reduced by the reduction under 37 C.F.R. § 1.704. The total PTA is thus 380 days under 37 C.F.R. § 1.703 – 43 days under 37 C.F.R. § 1.704 = 337 days.

Applicants respectfully request that the determination of Patent Term Adjustment be corrected prior to issuance of the above-referenced application.

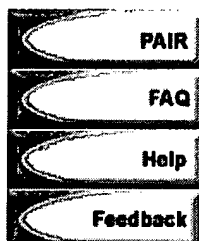
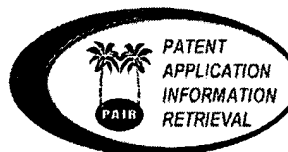
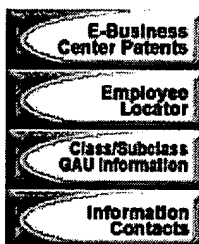
Respectfully submitted,


Nicholas M. Bolvin
Registration No. 45,650
Attorney for Applicants

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| Search results for application number:09/813,279 | | | |
|--|------------------------------|----------------------------|--|
| Application Number: | 09/813,279 | Customer Number: | - |
| Filing or 371(c) Date: | 03-19-2001 | Status: | Notice of Allowance Mailed Application Received in Off Publications |
| Application Type: | Utility | Status Date: | 05-24-2004 |
| Examiner Name: | LEARY, LOUISE N | Location: | ELECTRONIC |
| Group Art Unit: | 1654 | Location Date: | - |
| Confirmation Number: | 1759 | Earliest Publication No: | US 2003-0104507 A1 |
| Attorney Docket Number: | 10743/6 | Earliest Publication Date: | 06-05-2003 |
| Class/ Sub-Class: | 435/008 | Patent Number: | - |
| First Named Inventor: | Keith Wood, Madison, WI (US) | Issue Date of Patent: | - |
| Title Of Invention: | METHOD FOR DETECTION OF ATP | | |

Select Search Option

Continuity Data

Patent Term Adjustment History

Published Documents

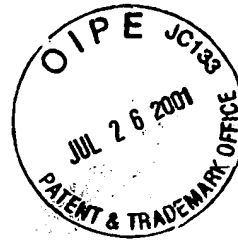
Search

| File History | |
|--------------|---|
| Date | Contents Description |
| 05-26-2004 | Sequence Forwarded to Pubs on Tape |
| 05-24-2004 | Receipt into Pubs |
| 05-20-2004 | Workflow - File Sent to Contractor |
| 05-04-2004 | Mail Notice of Allowance |
| 05-03-2004 | Issue Revision Completed |
| 05-03-2004 | Notice of Allowance Data Verification Completed |
| 05-03-2004 | Notice of Allowability |
| 02-17-2004 | Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received |
| 02-24-2004 | Date Forwarded to Examiner |
| 02-17-2004 | Response after Non-Final Action |
| 11-28-2003 | Mail Non-Final Rejection |

| | |
|------------|---|
| 11-17-2003 | Non-Final Rejection |
| 09-29-2003 | Information Disclosure Statement (IDS) Filed |
| 09-03-2003 | Date Forwarded to Examiner |
| 08-25-2003 | Response after Non-Final Action |
| 06-03-2003 | Mail Non-Final Rejection |
| 06-02-2003 | Non-Final Rejection |
| 04-17-2003 | Case Docketed to Examiner in GAU |
| 03-03-2003 | Information Disclosure Statement (IDS) Filed |
| 02-27-2003 | Case Docketed to Examiner in GAU |
| 12-12-2002 | Application Dispatched from OIPE |
| 12-11-2002 | Application Is Now Complete |
| 11-12-2002 | Additional Application Filing Fees |
| 11-12-2002 | CRF Disk Has Been Received by Preexam / Group / PCT |
| 12-09-2002 | CRF Is Good Technically / Entered into Database |
| 10-01-2002 | SEQUENCE ERRORS |
| 01-30-2002 | Additional Application Filing Fees |
| 01-30-2002 | CRF Disk Has Been Received by Preexam / Group / PCT |
| 03-08-2002 | CRF Does Not Match Application Specification -- Applicant Must Co |
| 10-22-2001 | SEQUENCE ERRORS |
| 09-12-2001 | CRF Is Flawed Technically / Not Entered into Database |
| 05-23-2001 | Notice Mailed--Application Incomplete--Filing Date Assigned |
| 05-23-2001 | Correspondence Address Change |
| 04-04-2001 | IFW Scan & PACR Auto Security Review |
| 03-19-2001 | Initial Exam Team nn |

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Case No: 10743/6
Serial No.: 09/813,279
Applicant: Keith Wood et al.



Please acknowledge receipt of the below identified:

Items Mailed: Transmittal Letter (in duplicate); Response to Notice to File Missing Parts; Copy of Notice to File Missing Parts; Check for \$40; Assignment Recordal Cover Sheet; Assignment; Declaration; Power of Attorney; Statement According to 37 C.F.R § 1.821(f); Sequence Listing; Diskette; and Return Postcard Evidencing Receipt of Same.

Date of Mailing: July 23, 2001

BRINKS HOFER GILSON & LIONE
Thomas J. Wrona/fi

Case No. 10743/6
Applicant Keith Wood et al.

Hon. Commissioner of Patents & Trademarks
Washington, D.C. 20231

Please acknowledge receipt of the below identified

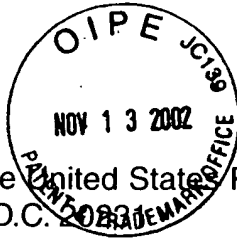
Serial No: Keith Wood et al.
Transmittal letter (in duplicate); Statement According to 37 C.F.R.
1.821 (f); Sequence Listing; Diskette containing Sequence Listing;
and postcard evidencing same



BRINKS HOFER GILSON & LIONE

By: Gregory M. Zinkl, Ph.D.

Date of Mailing: December 18, 2001



Case No. 1043/6
Applicant WOOD

Director of The United States Patent & Trademark Office
Washington, D.C. 20590

Please acknowledge receipt of the below-identified:

Serial No 09/813,279

Items Mailed Response to Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence; copy of Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence; Statement Verifying Identical Paper and Computer Readable Copy, two (2) floppy disks containing computer readable copy of sequence listing; paper copy of sequence listing; transmittal letter (in duplicate) and postcard evidencing receipt

BRINKS HOFER GILSON & LIONE

By: J. Matthew Buchanan, Reg. No. 47,459

Date of Mailing November 11, 2002